



Tax Information Bulletin

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1. New Legislation Takes Effect

The following summaries reflect legislative changes enacted in 1996 related to the Sales and Use Tax Law and selected other tax laws administered by the Board. The changes are effective January 1, 1997, unless otherwise indicated. For copies of bills, please write to the Legislative Bill Room, State Capitol, Room B-32, Sacramento, CA 95814.— Editor

Certain loans of automobiles to university employees subject to tax based on the fair rental value. *Assembly Bill 1694 (Chpt. 366, Stats. 1996).* Under specified conditions, a motor vehicle dealer who loans a motor vehicle to any University of California or California State University employee is liable for use tax based on the vehicle's fair rental value, rather than on the dealer's cost for the vehicle.

Florists operating without a seller's permit could face new \$500 penalty. *Assembly Bill 2551 (Chpt. 1130, Stats. 1996).* If a retail florist does not obtain the proper sales and use tax

permit, the Board is authorized to impose a \$500 penalty in addition to other applicable penalties. Mobile retail florists must retain copies of their seller's permit at each location where they make retail sales.

Certain purchases of property becoming a component part of railroad equipment are now exempt from use tax. *Assembly Bill 3375 (Chpt. 550, Stats. 1996, effective September 16, 1996).* Use tax does not apply to (1) the storage, use or other consumption in this state of tangible personal property that becomes a component part of railroad equipment, as defined, in the course of repairing, cleaning, altering or improving that railroad equipment outside of this state, and (2) charges made for labor and services rendered with respect to that repairing, cleaning, altering, or improving.

Cities and counties restricted from imposing their local occupancy tax on the meals included in the price of a room. *Assembly Bill 3407 (Chpt. 940, Stats. 1996).* Local governments cannot include in the room rate subject to the local occupancy tax the price of food products subject to the sales and use tax. The measure distinguishes between the charge for a night's lodging and the charge for a meal.

Manufacturers who lease property may elect to pay tax on the property's "cost price" under limited conditions. *Senate Bill 38 (Chpt. 954, Stats. 1996).* A manufacturer who leases tangible personal property to customers may elect to pay tax based on the "cost price" of the property, rather than on rental receipts, if the following conditions are met: the lessor manufactured the leased property; the property qualifies for the 6 percent income tax credit under Section 17053.49 or 23649 of the Revenue and Taxation Code; the property is leased to a qualified person, as defined; and the property is leased in a form that is not substantially the same form as acquired. For more information regarding this election, including a definition of "cost price," please order a copy of the enacted legislation.



Sales of used items by certain nonprofit thrift stores are exempt. *Assembly Bill 3187 (Chpt. 781, Stats. 1996).* Until January 1, 2002, the sale and use of used clothing, household items, or other retail items sold by a thrift store operated by a nonprofit organization is exempt from tax if (1) the purpose of the thrift store is to obtain revenue for funding medical and social services to individuals with HIV or AIDS, (2) at least 75 percent of its net revenues are actually expended for that purpose, and (3) the nonprofit organization is exempt from income taxation under Section 23701d of the Revenue and Taxation Code.

Sales and purchases of certain drugs and medicines administered to food animals are now exempt. *Senate Bill 38 (Chpt. 954, Stats. 1996).* Tax does not apply to the sale or purchase of drugs and medicines that are administered to animals whose food products are normally used for human consumption, if the primary purpose of the administration of the drug or medicine is to prevent and control disease.

Increase in the minimum gross receipts requirements for aircraft common carriers. *Senate Bill 38 (Chpt. 954, Stats. 1996).* It is now presumed (unless established otherwise) that the owner of an aircraft is not engaged in business as a common carrier of persons or property if the yearly gross receipts of that person from the use of the aircraft in the transportation of persons or property do not exceed 20 percent of the purchase cost of the aircraft to him or her, or \$50,000, whichever is less. For aircraft leased to common carriers, it is now presumed (unless established otherwise) that the aircraft is not regularly used in the business of transporting for hire persons or property if the yearly gross receipts of the lessor from the lease of that aircraft to persons using that aircraft as common carriers of property or persons do not exceed 20 percent of the cost of the aircraft to the lessor, or \$50,000, whichever is less. In addition, the bill provides that "gross receipts" do not include compensation by the person or related parties for use of the aircraft as a common carrier.

Items that become a component part of certain aircraft are now exempt. *Senate Bill 38 (Chpt. 954, Stats. 1996).* On and after October 1, 1996, the following are exempt from sales or use tax: (1) the sale or purchase of tangible personal property that becomes a component part of aircraft as a result of maintenance, repair, overhaul or improvement of that aircraft in compliance with Federal Aviation Administration requirements and (2) any related charges made for the labor and services, provided the aircraft is exempt. To be exempt, the aircraft must have been sold to persons using the aircraft as common carriers of persons or property under authority of the laws of this state, the United States, or any foreign government, or sold to any foreign government for use by that government outside California, or to non-California residents who will not use that aircraft in this state other than in the removal of the aircraft from California.

Partial exemption for leases of qualifying property by manufacturers is extended. *Senate Bill 38 (Chpt. 954, Stats. 1996).* With respect to leases of tangible personal property that are "continuing sales" and "continuing purchases," the 5 percent manufacturing equipment exemption would apply to the rentals payable pursuant to that lease for a period of six years, provided the lessee is a qualified person and the property is used in a qualifying activity.

Innocent spouse provisions expanded. *Senate Bill 1827 (Chpt. 1087, Stats. 1996).* A spouse's name need not be on a seller's permit to qualify for relief from a sales tax liability when the spouse had no knowledge of a liability and received no significant benefit from a tax understatement. Provisions in the bill also allow relief from self-assessed tax liabilities. Further, the bill extends the current statute of limitations time period from three to five years to give an innocent spouse sufficient time to discover that he or she is being held liable for the other spouse's tax liability.

New "failure to file penalty" added. *Senate Bill 1827 (Chpt. 1087, Stats. 1996).* A new 10 percent penalty is imposed on retailers who fail to file their return on a timely basis — regardless of



whether they paid their tax liability on a timely basis. The penalty is 10 percent of the taxes due for that period. This measure also limits penalties to 10 percent on any one return from either traditional or electronic fund transfer filers.

Changes made to security requirements. *Senate Bill 1827 (Chpt. 1087, Stats. 1996).* The maximum amount of sales tax security the Board can require has increased to \$50,000 from the current limit of \$10,000. The bill also allows the Board to release security on corporations and limited liability companies in the event they have established a record of timely reporting and tax payments.

Unpaid tax liability could lead to suspended ABC license. *Senate Bill 1901 (Chpt. 409, Stats. 1996).* The Board can request the suspension of an alcoholic beverage license by the Alcoholic Beverage Control Board if a taxpayer is delinquent in paying sales and use tax liabilities. The bill also requires any sales and use tax liabilities to be at least three months delinquent before the suspension process may begin.

2. Santa Cruz Earthquake Recovery Tax Expires March 31, 1997

The sales and use tax rate in Santa Cruz County will decrease from 8.25 percent to 7.75 percent on April 1, 1997. Businesses are advised, however, that a new 0.25 percent district tax may take effect on April 1, 1997, which would result in a sales and use tax rate of 8.0 percent. —Editor

Scheduled Rate Decrease

On March 31, 1997, the Santa Cruz County Earthquake Recovery Bond (SCER) transactions (sales) and use tax will expire. Consequently, taxable transactions occurring on or after April 1, 1997, are not subject to the SCER tax.

With the expiration of the 0.50 percent SCER tax, the tax rate in the county will decrease to 7.75 percent. You must report the SCER tax on taxable transactions occurring on or before March 31, 1997. If you collect SCER sales tax reimbursement or use tax after March 31, 1997, you must return the amount of tax collected to your customers or forward it to the state.

Note: The Santa Cruz Metropolitan Transit District (SCMT), which has been in effect since 1979, remains in effect. You should continue to report transactions (sales) and use taxes for this district.

Potential New Tax District

At the time we went to press (November), Santa Cruz County voters were scheduled to vote on the creation of the Santa Cruz County Public Library Authority transactions (sales) and use tax. If approved, the 0.25 percent tax would take effect on April 1, 1997, resulting in a sales and use tax rate in the county of 8.0 percent. We will advise readers of the outcome of the vote in the *March Tax Information Bulletin*, to be issued in late March 1997. For earlier notification, please check your newspaper or other media sources, call our toll-free Information Center, or visit our Internet site (see page 8).

3. File on Time To Avoid Interest and Penalty Charges

Mailed returns must be postmarked by due date.

To avoid penalty and interest charges for late filing, any returns, forms, and payments that are mailed *must be postmarked on or before the specified due date*. When mailing your return, please be sure to do so before the daily postal pickup to ensure a timely postmark. If the due date falls on a Saturday, Sunday, or State holiday, returns that are postmarked by the next business day will be considered timely. A return or payment postmarked after the due date may be considered timely if you provide satisfactory proof that it was mailed on time, with sufficient postage, to the proper address.

See also legislative summary on page 2, "New failure to file penalty added," effective January 1, 1997.

4. Claiming Deductions for "Tax-Paid Purchases Resold"

If you are a retailer and pay sales or use tax on your purchase of merchandise that you later resell, you may be entitled to take a deduction on your tax return for the cost of the resold merchandise (the amount you paid for the



merchandise). By taking a deduction on your return, you will lower your tax liability for the reporting period and, as a result, be credited for the tax previously paid on your purchase.

This deduction is listed on your tax return as “cost of tax-paid purchases resold prior to use.” Examples of circumstances under which you can claim this deduction include:

- You made a purchase with the intent to use the property, but later resold it before making any use of it (other than retention, demonstration or display).
- You do not ordinarily sell or stock the particular property and consequently did not purchase it with a resale certificate. Your sale of the property is unusual — for example, it is made to accommodate an employee or a customer.
- You did not use a resale certificate to purchase the property because you generally use it. However, you may occasionally sell a small amount prior to use.
- You mistakenly paid sales tax reimbursement or use tax on property you purchased for resale in the regular course of business.

The deduction should be taken on the return filed for the period in which the property was resold. If the deduction is not taken in the proper period, a claim for refund must be filed to recover the tax overpayment.

In general, to take a tax-paid purchases resold deduction, there must be tax due on the subsequent retail sale of that specific property. However, if the sale is exempt from tax (for example, it is sold in interstate commerce), you may claim a deduction for the sale on your return only if the return includes taxable sales or purchases that exceed the amount of the deduction. Otherwise, you must generally request a refund directly from the vendor who collected the tax and paid it to the state. Please call our Information Center if you have questions regarding this deduction. You can also request a copy of Regulation 1701, *Tax-Paid Purchases Resold*.

5. Alternative Settlement Program for Disputed Tax Cases

Many taxpayers are unaware of the Board's tax settlement program, under which the Board is authorized to settle disputed civil tax matters — cases that are the subject of protests, appeals, or refund claims. The purpose of the settlement program is to reduce the time and costs that can be incurred through the normal appeals process.

Staff independently examine the facts of a case and the arguments set forth by the taxpayer. Considering the applicable law and evaluation of the facts, staff may negotiate a proposed settlement agreement that differs from the original billing notice. That agreement, if accepted by the taxpayer, is subject to approval by the Executive Director, the Attorney General's Office, and the Members of the Board. Such agreements become final and cannot be appealed.

Only active cases for which a Petition for Redetermination or a Claim for Refund has been filed can qualify for settlement consideration. Other restrictions may apply.

For more information, please call the Settlement Section at 916-324-2836 (sales and use tax cases) or the Program Planning and Evaluation Division at 916-324-2306 (other taxes and fees).

6. Understanding Your Rights As a Taxpayer

As a taxpayer, you have many rights under the Sales and Use Tax Law, including the right to:

- Know how the law affects you
- Be treated fairly
- Question actions and decisions of Board staff members and officers that affect your business operations

Of course, along with those rights, you have certain responsibilities, including the responsibility to:

- Keep informed about tax laws and regulations
- File tax returns
- Maintain adequate records of your business operations



Publications Available

If you have questions regarding your rights under the Sales and Use Tax Law, you should request a copy of pamphlet 70, *The California Taxpayer's Bill of Rights*. If you have questions concerning sales and use taxes as they apply to your business, you may want to order a copy of a pamphlet designed specifically for your type of business. Some of the more frequently requested pamphlets include:

No. Title

- | | |
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| 9 | Tax Tips for Construction and Building Contractors |
| 18 | Tax Tips for Nonprofit Organizations |
| 37 | Tax Tips for the Graphic Arts Industry |
| 44 | Tax Tips for District Taxes |
| 46 | Tax Tips for Leasing of Tangible Personal Property in California |
| 71 | California City and County Sales and Use Tax Rates |
| 73 | Your California Seller's Permit |
| 74 | Closing Out Your Seller's Permit |
| 76 | Audits and Appeals |
| 77 | Publications (list of pamphlets of interest to business readers) |

See page 8 for information on how to order publications.

7. Change in Tire Recycling Fee Law Effective January 1, 1997

Currently, sellers of new or used tires who accept tires that are left with them for disposal are required to collect a twenty-five cents recycling fee for each tire. On January 1, 1997, the fee will no longer be due on tires that are left for disposal. Instead, it will apply to the sale of new tires.

"New tire" means a pneumatic or solid tire intended for use with on-road or off-road motor vehicles, motorized equipment, construction equipment, and farm equipment. "New tires" do not include (1) retreaded or recycled tires or (2) tires mounted on wheels sold as part of a motor vehicle or equipment.

Note: Businesses accepting tires for disposal through December 31, 1996, must continue to collect and remit the recycling fee for those tires.

If you are required to collect this fee and need further information or need to register, please call the Information Center (see page 8).

8. Do You Own or Operate an Underground Storage Tank?

Generally, if you own an underground storage tank used to store petroleum products, you must register with the Board and pay a quarterly fee for each gallon placed into the tank (effective January 1, 1997, the fee is \$0.012 per gallon). There are some exceptions to this requirement. For example, certain farm and residential tanks used to store heating oil on the premises where the oil is used are exempt.

Owners are liable for payment of the quarterly fee, whether or not they operate the tank. Operators are not liable for the fee unless they are also the owners of the tank they operate.

If you are the operator, but not the owner, of an underground storage tank, please provide a copy of this article to the owner or refer the owner to us at 916-322-9669.

9. Sales and Use Tax Short Form Continues To Be a Success

There is now a simpler way to file your sales and use tax return. Many businesses have found it easier to report taxes since they began filing the short form BT-401-EZ, a simplified sales and use tax return. The form is designed primarily for businesses whose sales are made within the county in which they are located. However, the form may not be used if:

- You sell fuel, automobiles, boats, aircraft, or makes sales to aircraft common carriers.
- You claim credit for sales tax paid to other states.
- You engage in fixed-price contracts or leases.
- You claim exemptions for returned merchandise, tax-paid purchases resold, cash discounts, bad debts, or other exempt transactions not provided for on the EZ return.

If you are not currently using the short form and are interested in doing so, please call the



telephone number printed on the front of your current sales and use tax return.

10. Highlights of 1996 Tax Information Bulletin Articles

Although you may have already read the original articles when you received previous Tax Information Bulletins (TIBs), the following summaries may include new information or further clarification that could affect your business.— Editor

Below is a summary of the more significant tax matters that were reported in the quarterly *Tax Information Bulletins* published during 1996. Please call the Information Center to order a copy of any of the following articles.

(1) Uniform “Sale for Resale” Certificate Created for States Bordering Mexico (September 1996 issue)

The four border states of Arizona, California, New Mexico, and Texas, together with the United Mexican States, have formed the Border States Caucus to create programs for promoting trade. As part of the program, the Caucus created the Border States “Sale for Resale” Certificate for use by the member states. The certificate is used in the same manner as a standard resale certificate.

Note: The Border States “Sale for Resale” Certificate is intended for use by sellers from any of the four U.S. border states and by Mexican merchants who are members of the Board’s Mexican Merchant Program (described in pamphlet 32, *Tax Tips for Sales to Purchasers from Mexico*). Mexican merchants who are not members of the Mexican Merchant Program are not authorized to use the certificate.

California sellers may accept the certificate from their resale customers located in Arizona, New Mexico, or Texas. They may also accept the certificate from members of the Mexican Merchant Program. Use of the certificate is acceptable when such merchants purchase goods for resale in their home state or country and transport the goods back across state and/or national borders. California sellers may also use this certificate when purchasing

merchandise from one of the other border states for resale in California.

(2) Tax Rate Changes Take Effect April 1, 1996, in San Diego and Monterey Counties (June 1996 issue)

On April 1, 1996, the following sales and use tax rates took effect:

- San Diego County: 7.75%
- Monterey County: 7.25%

As many retailers are aware, the tax rate in both counties was offset by 0.75 percent to compensate for special taxes that had been collected but which were ruled unconstitutional. Businesses were allowed to claim a credit of 0.75 percent on their sales and use tax returns for taxable sales in each county (so long as they also reduced the amount of sales tax reimbursement collected from their customers by the same 0.75 percent). The 0.75 percent credit terminated in both counties on March 31, 1996. Sales and use tax returns were modified to remove the 0.75 percent tax credits.

Fixed-Price Contracts. As of April 1, 1996, fixed-price contracts are also subject to the pre-rollback rates listed above. There is no provision in the Sales and Use Tax Law that specifically exempts fixed-price contracts from returning to the pre-rollback rates. However, under limited conditions certain transactions may still be subject to the rollback rates of 7.00% for San Diego County and 6.50% for Monterey County. Please order a copy of the article for more information on these limited conditions.

Leases. In the case of taxable leases, the rate in effect on or after April 1, 1996, applies to lease payments made on or after that date, even though the lease agreement was entered into prior to April 1, 1996.

Newspaper and Periodical Subscriptions. The rate changes (higher rate) apply to taxable subscription charges for newspapers and periodicals (tax applies to subscription charges for newspapers and periodicals that are delivered by means other than U.S. mail or common carrier). The lower rollback rates apply to deliveries made prior to April 1, 1996. The



higher (pre-rollback) rates apply to deliveries made on or after April 1, 1996.

(3) Tax Rate Decrease Takes Effect in Parts of Fresno County March 21, 1996 *(June 1996 issue)*

Retailers should not report or collect the 0.10 percent Fresno Metropolitan Projects Authority (FMPA) district tax for sales or purchases made on or after March 21, 1996. The tax, which was found unconstitutional, was in effect from July 1, 1993, through March 20, 1996. Commonly referred to as the "Arts to Zoo" tax, it applied to transactions in the City of Fresno and the surrounding "sphere of influence."

Tax Refund Program. The Board initiated a program to refund the FMPA taxes collected. To be eligible for a refund, your claim must be for single or combined purchases totaling at least \$5,000 (eligible purchases totaling \$5,000 will yield a \$5 refund). All claims must include proof that you paid the FMPA tax and be filed no later than March 31, 1997. If you would like more information concerning the refund program or you would like a claim form mailed to you, please call 1-800-400-7115.

(4) Goods Delivered From Out of State May Be Subject to New Reporting Requirements *(September 1996 issue)*

The following allocation changes do not apply to out-of-state retailers who are voluntarily registered to collect and report California use tax. —Editor

The method for allocating the one percent local use tax for certain sales and purchases changed July 1, 1996. The change applies only to individual sales or purchases of \$500,000 or more when the goods are shipped from out-of-state inventories. You may be affected by this change if (1) you are a retailer delivering goods to California customers from inventories located outside California or (2) you are a purchaser responsible for reporting the use tax on purchases delivered from out-of-state inventories.

Procedures for Sales and Purchases Made on or after July 1, 1996. As stated above, the local tax allocation procedures have changed concerning individual sales or purchases of \$500,000 or more when the goods are shipped from out-of-

state inventories. In the past, the one percent local use tax for such transactions was allocated based on the countywide area into which the goods were delivered. Now, the tax must be allocated to the specific jurisdiction (city or the unincorporated county area) where the first functional use will occur. (Functional use means the use for which the subject property was designed or intended.) Allocations for such sales or purchases must be made on Schedule F, *Detailed Allocation of 1% Uniform Sales and Use Tax*. If you require a Schedule F and one is not provided with your return, please contact your local Board office. For individual sales or purchases of less than \$500,000, you may continue to allocate the one percent local use tax as you have in the past.

(5) Method for Allocating Tax on Certain Motor Vehicle Leases Changed January 1, 1996 *(March 1996 issue)*

The following summary applies to taxpayers who report use tax on vehicle leases based on rental receipts. This allocation change is the result of the passage of Senate Bill (SB) 602 (Chapter 676, Statutes 1995). Due to questions concerning how SB 602 effects used car dealers who are also lessors, the Board and the authors of the bill are currently working together to provide clarification and additional information regarding this and other applicable issues. When available, a notice will be provided to lessors potentially affected by the bill. — Editor

If you are a lessor, leaseholder, or are responsible for reporting the use tax due on leases of new or used motor vehicles, you may be required to change how you allocate the local use tax for leases entered into on or after January 1, 1996. The change in allocation methods applies only to your allocation of the one percent local use tax and does not affect your current method of allocating district taxes (Schedule A of your sales and use tax return). The applicable district use tax due on motor vehicle leases will continue to be allocated to the place where the vehicle is registered.

Specifically, SB 602 affects:

- The determination of "place of use" for the allocation of the one percent local use tax



- The definition of long-term and short-term leases for certain motor vehicles
- What schedule to use when allocating the one percent local use tax due on qualified leases

If you are a motor vehicle lessor and believe that the SB 602 changes affect you, please call the Information Center (see next column) and order a copy of the original March article.



Note to businesses that file tax returns once a year: Each year, you receive only the December *Tax Information Bulletin*, which includes highlights of articles printed in the three previous bulletins. If you would like to receive all four bulletins each year, please write to the following address and ask to be added to Mailing List #15: State Board of Equalization; Mail Services Unit (MIC:12); Attn: Addressing Systems; P.O. Box 942879; Sacramento, CA 94279-0012.

11. New or Revised Reference Material

If you would like to obtain a copy of any of the following reference material, please call the Information Center.

Sales and Use Tax Regulations

- 1584 Membership Fees
(effective August 2, 1996)
- 1589 Containers and Labels
(effective August 8, 1996)
- 1591 Medicines and Medical Supplies,
Devices and Appliances
(effective August 23, 1996)
- 1598 Motor Vehicle and Aircraft Fuels
(effective August 23, 1996)
- 1802 Place of Sale for Purposes of Bradley-
Burns Uniform Local Sales and Use Tax
(effective August 11, 1996)

Pamphlets

- 34 Tax Tips for Motor Vehicle Dealers
(June 1996)
- 51 Guide to Board of Equalization Services
(October 1996)

- 58-A How To Inspect and Correct Your
Records
(June 1996)
- 80-B Electronic Funds Transfer Program,
ACH Debit
(October 1996)

For More Information

Information Center. Staff are available from 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding State holidays. Call:

1-800-400-7115

For telephone devices for the deaf:

1-800-735-2929 (TDD phone)

1-800-735-2922 (voice phone)

Call 24 hours a day to use the automated fax-back service or to leave a recorded message requesting a specific publication.

Internet. Visit us at <http://www.boe.ca.gov> for information on sales and use tax rates by county, publications, district office telephone numbers, public meetings, and so forth.

Supply Unit. If you know the name of the publication, form, or regulation you need, you can write to the Supply Unit at 3920 West Capitol Avenue, Suite 200; West Sacramento, CA 95691.

Tax Evasion Hotline. If you believe a business should be reporting taxes and is not, you can call us toll-free to report it. Call during working hours at 1-888-334-3300.

Legislative Bills. Write to the Legislative Bill Room, State Capitol, Room B-32, Sacramento, CA 95814. The Bill Room does not provide copies of Board forms or publications.